



Blue Consulting Pvt. Ltd

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Impact of amendments in the  
provisions of Provident Fund (PF)  
regulations

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Doing common things, Uncommonly way.



1. Key Amendments
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# 1. Key Amendments



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- It's been approx. 3 months since Ministry of Labour notified the changes in PF regulations which increased the PF wage ceiling from Rs. 6,500 to Rs. 15,000, by more than 125%.
- Around same time (just 3 weeks before), an internal circular was issued which instructed the regional PF offices to inspect the establishments which have splitted the wages to reduce the PF liability.
- The purpose of this whitepaper is to discuss the impact of both the developments on employers and employees with a possible solution.

## 2. Impact on Employer & employees



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- As per the PF provisions, an employer is required to contribute 12% of basic wages and this contribution amount is considered a part of CTC of an employee.
- Now, with the drastic increase in the ceiling of basic wages, the contribution of employer will go up by approx. 125% (i.e. from Rs, 780 to Rs. 1800 per month) where the basic wages of employees is equal to or above Rs. 15,000. Same contribution will be made by the employee which will reduce the take home salary by a minimum of Rs. 2000 per month.
- A reduction of Rs. 2,000 in take home salary will impact the employees in the lower salary bracket significantly and they might resort to the employer to share some of the burden.
- Apart from this change in ceiling limit of basic wages, the PF department has starting inspection at many companies to find out if they are playing with the definition of basic wages to reduce their PF liability.



### 3. Basic wage

- It is important for every employer to understand the definition of “Basic Wage” and assess their risk level if any inspection takes place in their premise.
- Definition of “Basic wages” as per the Section 2(b) of the EPF & MP Act, 1952 is given below:

*“basic wages” means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, **but does not include***

  - i. the cash value of any food concession;*
  - ii. any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house- rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;*
  - iii. any presents made by the employer;*
- The text “any other similar allowance” in the above definition has always been a matter of interpretation and subject to various important judicial decisions by Hon’ble Supreme Court and High Courts in number of cases.



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## 4. What's in practice?

- Practically, majority of companies doesn't have “Dearness Allowance” as component of Salary.
- Whereas, following components are quite prevalent in salary structure:
  - Conveyance allowance
  - Special allowance
  - Medical allowance
- While calculating the PF liability, the above components are not included in the figure of Basic Wages which reduces the PF contribution significantly.
- Companies (employers) consider the above allowances in “any other similar allowance” and exclude as per the definition of Basic wages under EPF & MS Act, 1952 (discussed in previous slide) whereas PF department interprets it otherwise.



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## 5. Correct position of law

- **Hon'ble Supreme Court** in *Jay Engineering Works Ltd v Union of India*, ruled that the expression 'any other similar allowance' should be of the same type as the allowances mentioned in the clause such as 'dearness allowance', 'house rent allowance', 'overtime allowance', 'bonus' and 'commission' as specifically excluded under Section 2(b) of the Act.
- **The Hon'ble Gujarat High Court** in the case of *Gujarat Cypromet Ltd V Assistant Provident Fund Commissioner*, and the **Hon'ble High Court of Karnataka** in the case of *Group 4 Securities Guarding Ltd. v Regional Provident Fund Commissioner*, had specifically stated that “Any agreement entered into between the employer and its employees for splitting of the amount payable by the employer to its employees for the service rendered by them, cannot take away the power of the Commissioner under Section 7A of the Act to look into the nature of the contract entered into between the employer and its employees and decide that splitting up of the pay payable to the employees under several heads is only subterfuge to avoid payment of contribution by the employer to the provident fund. It was open to the Commissioner to lift the veil and read between the lines to find out the pay structure fixed by the employer to its employees and to decide the question whether the splitting up of the pay has been made only as a subterfuge to avoid its contribution to the provident fund.”
- It's quite clear that only few specific allowances specified in the definition can be excluded and not all kind of allowances, specially discussed in the previous slide.

## 6. Solution



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- Considering the above judgments and a recent internal circular about inspection of establishments to check the splitting of wages, it's very important to re-assess the calculation of basic wages and designing of salary structure.
- Looking at the language of internal circular of PF department, it seems that the department might be lenient to the companies where basic wages for PF calculation is more than 50% of the total salary.
- To achieve a balance in the payroll expense due to this increased liability, companies might consider to restrict their PF contribution up to the limit of Rs. 15,000 only even if earlier they were contributing on the basic salary in excess of Rs. 15,000. This is now a settled law by Hon'ble Supreme Court in SLP No. 1205/2009 in the matter of Marathwada Gramin Bank Employees Union vs. Management of Marathwada Gramin Bank wherein it was ruled that employer can limit it's contribution any time during the year only up to the statutory ceiling limit even if earlier it was contributing on the full basic wages (which exceeded the statutory ceiling limit).
- PF department has also officially accepted this position of law vide its office letter No. LC-2(637)2009/MH/12780 dated 08.10.2013





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## 7. About us

Served more than **50**  
**clients** in past **9**  
years

Strong team of **70**  
energetic people,

State of the art  
office of **3,500** sqft

Impressive client  
retention period : >  
**6** years

Client's turnover :  
INR **50** cr to Rs.  
**1,500** cr

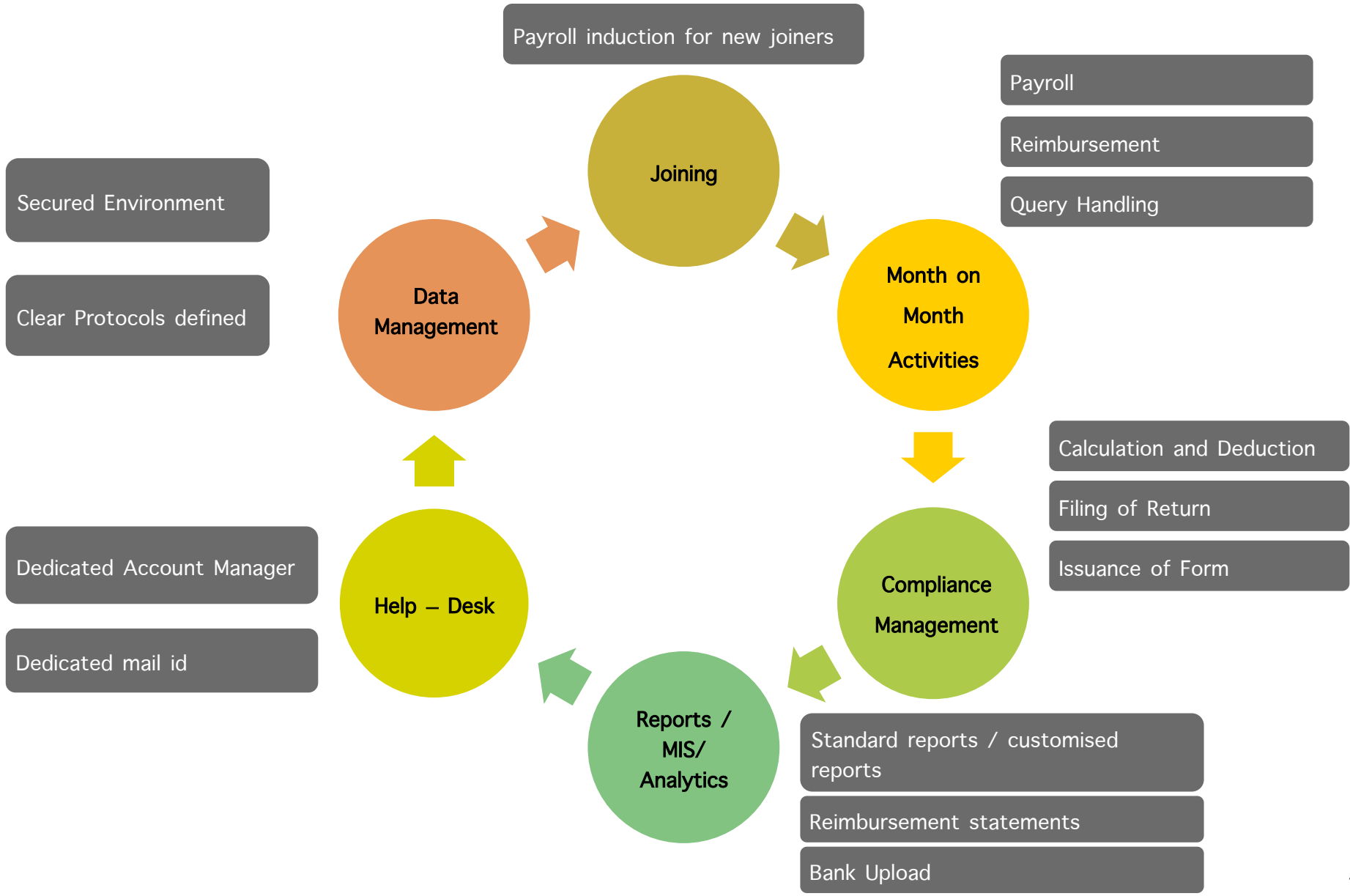
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to SLA's



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# 8.1 Our Payroll solution to Company

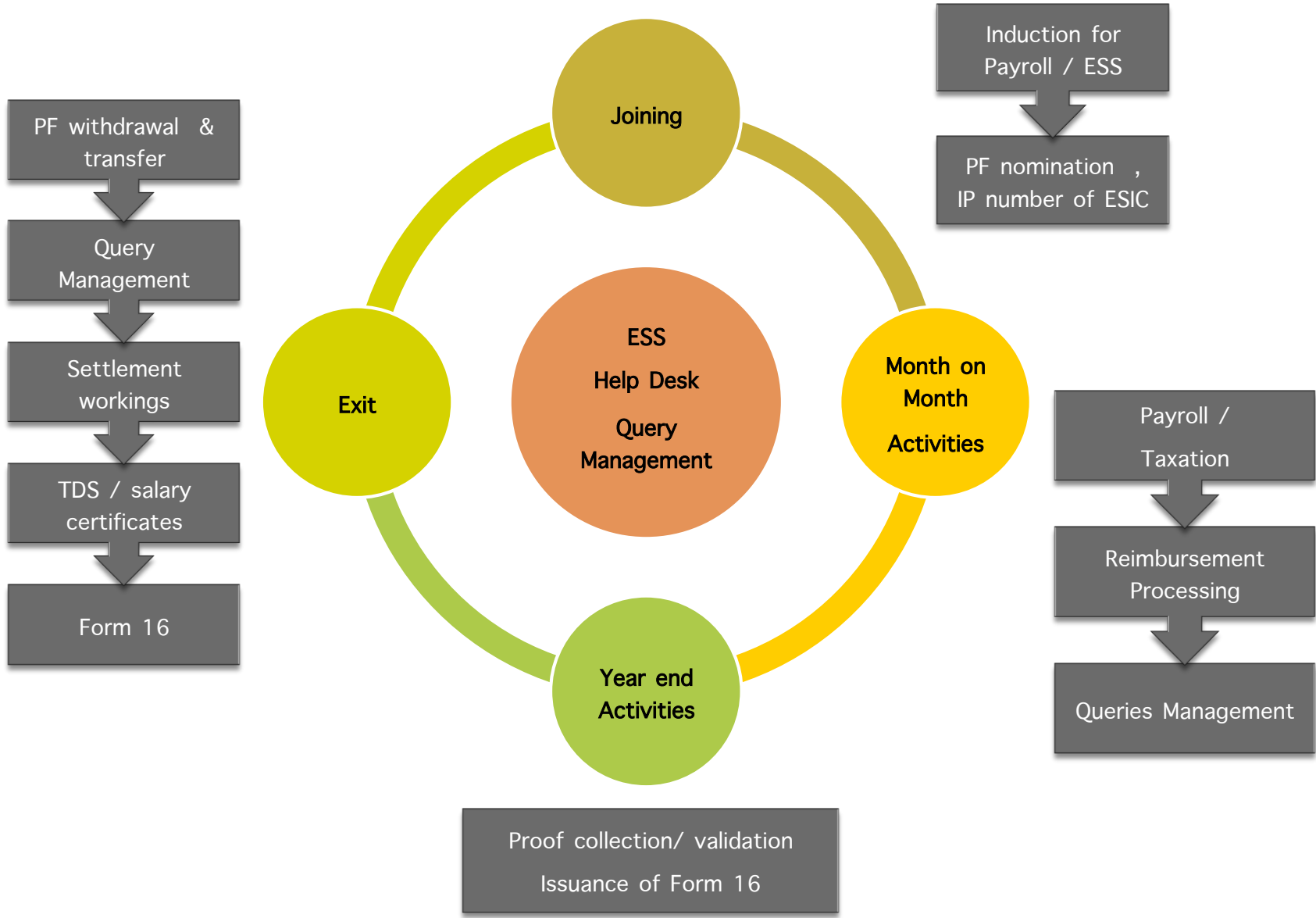




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# 8.2 Our Payroll solution to Employees



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